

**ARIZONA SUPREME COURT
CRIMINAL RULES VIDEO-CONFERENCE ADVISORY COMMITTEE
MEETING MINUTES
February 4, 2009**

Members Present:

Hon. Antonio Riojas, Chair
Kent Batty
Hon. Gary Donahoe
Hon. Samuel Goodman
Robert Hirsh
Capt. Charles Johnson
Bob James
Capt. Rodney Mayhew
Jeremy Mussman
Deborah Schaefer
Sally Wells

Guests and Presenters:

Rod Franklin
Stewart Bruner
Dan Carrion
Theresa Barrett
Dave Condolora
Dana Hlavac

Members not Present:

Hon. K.C. Stanford
Terry Stewart

Member present by telephone:

Amelia Cramer

Staff: Patience Huntwork, Mark Meltzer, Tama Reily

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1. Call to order. The meeting was called to order at 10:10 a.m. The draft minutes of the January 9, 2009, meeting were unanimously adopted as proposed.

2. A technical overview of the statewide video-conferencing network. Rod Franklin and Stewart Bruner, both of whom are from the Information Technology Division ("ITD") of the Administrative Office of the Courts ("AOC"), provided a technical overview of the AOC's statewide video-conferencing network, as well as an overview of local networks used by courts and connected facilities, such as jails.

The members were informed that every county courthouse in Arizona is connected to the Arizona Judicial Information Network ("AJIN"). Some municipal and justice of the peace courthouses, but not all of them, are also connected to AJIN. Jails are typically on a county or city network. The AJIN and local networks each have protective firewalls, but courts on the AJIN network can communicate through these firewalls, for example, to a local jail, provided AOC and the county have coordinated their firewall settings. All fifteen Arizona counties are connected to AJIN, and the AOC controls 13 of those connections.

The AOC guarantees sufficient bandwidth on AJIN to assure the level of quality necessary for a video-conference. However, because of the finite amount of AJIN bandwidth dedicated to videoconferencing, only one video-conference at a time, per court location, is permitted. For example, the use by a remote court reporter of an AJIN video-conference connection at one court location would preclude the concurrent use of video-conferencing across AJIN by another court at that same location or to another participant in another court location.

Members were advised that although the AOC would like to expand its network over time so that a larger number of video-conferences could occur simultaneously over AJIN, the current budget requires any expansion to be deferred to the future.

Because the AOC uses a standard internet protocol (TCP/IP) and communications protocol (H.323), AJIN users can communicate with any others who employ the same standards, even in separate branches of government. After a county or municipality makes a purchase of video equipment, the AOC must be involved in making the connection to AJIN.

Mr. Franklin and Mr. Bruner also addressed questions regarding applicable technical standards. Certain standards are set out in A.C.J.A. section 1-105 (“Enterprise Architecture Standards”). The Commission on Technology (“COT”) has given the Technical Advisory Council the ability to adopt technical standards. In certain circumstances, particular products are specified in the standards, but this is not the case with video-conferencing equipment; only the H.323 protocol is specified for video-conferencing over AJIN with a maximum transfer rate of 384 kbps. Mr. Bruner recommended emulating the structure of A.C.J.A. section 1-602, which deals with “Digital Recording of Court Proceedings”, when drafting any contemplated code section or other standards for video-conferencing.

During the course of this presentation, the members discussed ways to assure confidential communications between defense counsel and a client during a video-conference. Among the recommendations were conversations by cell phone; privacy rooms; and permitting counsel to turn off microphones on the video-conferencing system.

The presentation concluded with a discussion of non-supported networks. Some Arizona court and county users do not follow the H.323 protocol on their local networks, having selected the ISDN protocol and equipment. This is an issue that these users should discuss with their vendors. It would be preferable for all local users to utilize the H.323 standard, and if possible, to get a non-compliant system upgraded by the vendors. It was noted that the majority of video-conferencing traffic from or to a county courthouse is via a local connection, typically a jail; and that there are usually a higher number of video-conferences that can be conducted simultaneously on a local network than can currently be conducted over AJIN.

The Chair thanked Mr. Franklin and Mr. Bruner for their informative presentation.

3. An informal discussion with a territory sales manager of BT Conferencing regarding video-conferencing in the courts. Dave Condolora from BT Conferencing addressed the Committee.

Mr. Condolora contended that video-conferencing enhances safety during the judicial process. He cited an event in Clark County, Nevada, where a corrections officer was murdered by an inmate during transport to a courthouse, which might have been avoided had the court proceeding been done by video-conference.

Mr. Condolora emphasized that video-conferencing systems are site specific. There is not a universal solution for all customers. For example, rooms have differences in size and shape, as well as ceiling heights and floor construction. Other differences include the presence or absence of pillars and windows, and the age of the buildings. Each video-conferencing system, he said, is customized. The optimum time to install a system is during building construction; it's less expensive than retrofitting.

With an ideal video-conference system, the participants will be oblivious to the technology and will have a normal meeting. Courtrooms pose particular challenges for system designs. If the customer wants a camera on everyone, who will be responsible for switching the camera view that is shown on the monitor? Mr. Condolora stated that he has a preference for wide angle cameras, because people in the courtroom like to do their jobs without dealing with the operation of a video-system during the court proceeding. An alternative is to use a wide angle camera that can also do a close-up of the speaker. Another alternative is to split the courtroom into three sectors, with a remote keypad which is used to select the desired camera view for one of the three sectors.

Mr. Condolora recommended using large screen (e.g., 42 to 50 inch) monitors. With a large, well-positioned monitor, only one monitor may be required to provide a view for everyone in the courtroom. He advised that high definition ("HD") is becoming the industry standard for monitors in video-conferencing systems. Close captioning is available. He noted that equipment now is of better quality, and has greater function, than a few years ago, and yet is less costly.

A question was posed as to whether a victim can watch a court's video-conference proceeding on a computer terminal at a remote location. Mr. Condolora answered affirmatively. A live, streaming video of a video-conference can be accessed on-line. However, if there is no camera or microphone at the remote site, the victim can only watch, and not participate.

In response to another question, Mr. Condolora stated that for various reasons, he has not tracked cost savings of his Arizona customers who use video-conferencing. However, his company believes that customers routinely have returns on their investment ("ROI") in a video-conference system within six months; and that only rarely does it take longer than one year to recoup the investment. He also noted that for those users who have a large carbon footprint, e.g., due to vehicle use, the recoupment can be even quicker. A large segment of cost savings using video-conferencing is attributable to lowering the costs of transportation.

Mr. Condolora was asked about the cost of a video-conference system for a courtroom. He prefaced his response by noting that each system is site specific. For example, a large courtroom might require more speakers and microphones than a smaller one. That said, he gave a range of \$50-75,000. A less expensive solution would involve placement of all the video-conference equipment on a cart. The cart, although portable, typically is moved little if at all. With installation and maintenance, as well as a high definition monitor, the cost for a cart system would be in the neighborhood of \$15,000.

Addressing standards, Mr. Condolora noted that there are industry standards, including the H.323 protocol as well as encryption standards. While Polycom and Tandberg, among others, adhere to industry standards, new software and other proprietary features are being continually developed.

A question was posed about screen size. Once again, this is not standard. The size of the room, and the seating arrangement in the room, are variables.

The members engaged in a discussion with Mr. Condolora on providing a method of confidential communications between defense counsel and defendant. He assured the members that technology exists to provide a means of confidential communication. Among the possible solutions was a two-way handset as a component of the video-conference system. Although comments were made about the competing interests of liberty and judicial efficiency, Mr. Condolora believes that technology exists to address whatever legal requirements may exist, and however complex those requirements may be.

The Chair thanked Mr. Condolora for his presentation, and the meeting was adjourned for a lunch break.

4. Members' position statements. After the recess, the members discussed various position statements concerning a proposed rule for video-conferencing in Arizona criminal proceedings.

The public defenders took the position that any judicial proceeding where a liberty interest is considered (e.g., a release or bail hearing, or sentencing), or which involves the consideration of evidence, is a "critical" proceeding, whether involving a felony or a misdemeanor, and that "critical" proceedings should not be done by video-conference. Since many initial appearances involve release determinations, it was the position of the defenders that these were "critical" and should be excluded from the scope of video-conferencing. A suggestion was made that what would be a "critical" proceeding should be considered in the light of existing law.

The R-06-0016 petitioner believes that initial appearances are an appropriate proceeding for video-conferencing. Moreover, the "right to appear and defend in person" under Article II, section 24, of the *Arizona Constitution* does not preclude this; and that the issue as to whether initial appearances might be done by video-conference was a significant impetus for this rule petition. It was noted that this "right to appear and defend in person" provision in section 24 was distinct from another provision in section 24 concerning the right of the accused "to meet the witnesses against him face to face." It was also contended that what is allowed by the *United States Constitution* in this area is coterminous with what is permitted under Arizona's constitution; see *State v Vincent* 159 Ariz. 418, 768 P2d 150 (1989).

A sheriff's representative noted that last year, the Maricopa County sheriff's office processed over 130,000 bookings, which equates to a high volume of initial appearances.

It was questioned whether this Committee exists because the applicable law is not clear, or whether the Committee exists to permit the stakeholders to reach their own consensus on video-conferencing in criminal cases. Most members favored the latter view.

The following case citations, most of which support video-conferencing in the courtroom, were offered by a member:

People v. Lindsey, 772 NE2d 1268 (Ill., 2002)
State v. Stroud, 804 NE2d 510 (Ill, 2004)
Commonwealth v. Ingram, 46 SW3d 569 (Ky, 2001)
In re Rule 3.160(a), Florida Rules of Criminal Procedure, 528 So2d 1179 (Fla., 1988)
Larose v. Superintendent, Hillsborough County Corrections, 702 A2d 326 (NH, 1997)
Commonwealth v. Terebieniec, 408 A2d 1120 (Pa. Super.Ct., 1979)
Scott v State, 618 So2d 1386 (Fla. App, 1993)

The Committee's Supreme Court staff attorney also cited two Arizona cases for the Committee's guidance:

State v Schackart, 190 Ariz. 238, 947 P2d 315 (1997)
State v Garcia-Contreras, 191 Ariz. 144, 953 P2d 536 (1998)

Based in part on these cases, she concluded that consideration must be given to constitutional guarantees which require the accused's physical presence in the courtroom, but that those guarantees are not absolute; and that the various types of proceedings must be individually examined to determine whether the defendant's physical presence at those proceedings, as distinct from that of defendant's counsel, would impact the defendant's ability to defend against the charge. It is her opinion that where there is no showing of a loss of influence or advantage by being personally present in court, judicial efficiency may outweigh the importance of personal presence.

A majority of the members concurred with this opinion. During the discussion which ensued, the following comments were made:

- A member noted that existing technology allows clear images and good audio communication via video-conference.
- In some cases, video-conferencing may be more advantageous to the defendant than a personal appearance.
- Victims often have greater comfort by watching a proceeding on a remote monitor than they do in watching the proceeding while physically present in the courtroom.
- Video-conferencing was not an impediment to the defendant's participation, but rather, that it should be looked upon as the use of technology to facilitate participation.

Some members felt that the judicial officer should have discretion about which cases and what specific proceedings might be done by video-conference. This discretion would extend to initial appearances and arraignments. Also, since the accused may waive constitutional rights, even proceedings such as trials or evidentiary hearings might, with appropriate waivers and under certain circumstances, proceed by video-conference.

At this point, the following cross-motions were made and considered:

MOTION: A motion was made for the Committee to utilize the proposed rule 1.6 set forth by the public defender members as the basis for the further work of the Committee.

The motion was defeated: 2-10-0. **CRVAC-09-001.**

MOTION: A motion was made for the Committee to utilize the proposed rule 1.6 set forth in R-06-0016 as the basis for the further work of the Committee.

The motion was carried: 10-2-0. **CRVAC-09-002.**

5. Plan for the next Committee meeting. The Chair directed the following future action:

- Should the Committee consider other circumstances (for example, a medical reason precluding the defendant from appearing in court) which might warrant video-conferencing under Rule 1.6?
- Should the Committee consider other modifications or amendments to Rule 1.6 in the form currently attached to R-06-0016 (as provided at Tab 4 of the notebooks)?
- How should the rule deal with the crucial issue of confidential communications between attorney and client?
- What are the minimum technical requirements for video-conferencing?

MOTION: As to the last item, a Committee member made a “friendly motion” to include in the R-06-0016 draft rule 1.6 the following language, which was taken from the draft rule 1.6 proposed by the public defender members:

“Any interactive audiovisual device must meet or exceed minimum technical specifications adopted by the Administrative Office of the Courts.”

There was unanimous agreement in favor of this motion, and the foregoing language will be included as the last sentence of paragraph (a) of Rule 1.6, as appended to R-06-0016. **CRVAC-09-003.**

ACTION. The Chair also asked the members to clarify at the next meeting what specific proceedings should be included and excluded from the ambit of Rule 1.6. The Chair requested that the members submit their lists of included and excluded proceedings to Committee staff at their earliest opportunity, so that these lists can be distributed by staff to the members prior to the date of the next Committee meeting.

11. Call to the Public. There was no response to the Chair’s call to the public.

12. Adjourn. The meeting was adjourned at 2:05 p.m. The next meeting is scheduled for March 4, 2009, from 10:00 a.m. to 2:00 p.m., at the State Courts Building in Phoenix.

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